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C. BENEDETTO, LEHIGH VALLEY
HOSPITAL, INC. AND ~~HEIWON CHUNG,~~
~~M.D.~~

JENNIFER L. BAKER AND KEVIN C.
BAKER, HER HUSBAND,

Plaintiffs

vs.

ALPHONSE A. MAFFEO, M.D.,
ALLENTOWN ANESTHESIA
ASSOCIATES, INC., KYLE C.
BENEDETTO, LEHIGH VALLEY
HOSPITAL, INC. AND ~~HEIWON CHUNG,~~
~~M.D.~~

Defendants

IN THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

NO. 10-4915

CIVIL ACTION- LAW

MEDICAL PROFESSIONAL LIABILITY
ACTION

TRIAL BY JURY OF 12 MEMBERS
AND 2 ALTERNATES DEMANDED

ASSIGNED TO THE HONORABLE
LAWRENCE F. STENGEL

**PRETRIAL MEMORANDUM ON BEHALF OF DEFENDANTS KYLE C.
BENEDETTO AND LEHIGH VALLEY HOSPITAL, INC.**

I. NATURE OF THE ACTION

This is a medical malpractice action arising from treatment rendered to Plaintiff, Jennifer Baker at Lehigh Valley Hospital on February 13, 2009. Plaintiffs assert that jurisdiction in the Eastern District of Pennsylvania is warranted because of the now diverse citizenship of the parties. Plaintiffs moved to another state after the surgery in question, but before they commenced this cause of action.

II. COUNTERSTATEMENT OF THE FACTS

According to the Complaint, Plaintiff, Jennifer Baker presented to Lehigh Valley Hospital on February 13, 2009 for an elective thyroidectomy. Mrs. Baker alleges that she was aware for some undefined period of time during the procedure, that that period of intra-operative awareness was caused by Defendants' negligence, and that she suffered Post Traumatic Stress Disorder ("PTSD") as a result of the episode of intra-operative awareness.

That Mrs. Baker experienced intra-operative awareness, that any period of awareness she experienced was caused by the negligence of Defendants, and that she suffered PTSD as a result of any period of awareness, are all contested by Defendants. To the contrary, Defendants will prove at trial that: (a) Mrs. Baker only experienced a period of (commonly experienced) awareness as she was coming out of (not during) her surgery; (b) any period of awareness she did experience was a known risk of the procedure in question and not the result of any negligence on the part of Defendants; (c) any maladies -- either psychological or physical -- that Mrs. Baker suffered and/or continues to suffer from are solely the result of conditions (including thyroid disease, sleep apnea, and/or psychological disorders) that have no relationship whatsoever to any averred act of negligence on the part of any defendant; and (d) Mrs. Baker was "treated" by a psychologist who served in an inappropriate dual role (as expert witness first and, only later, as treater), not administered the appropriate psychological tests to determine whether she suffered from PTSD and, accordingly, that her claim that she does is incredible.

III. DAMAGES

Plaintiffs are not making a wage loss claim. Plaintiffs' entire damages case consists of claims for: (a) compensation for her alleged pain and suffering experienced during the alleged period of awareness and (b) compensation for her alleged PTSD that she alleges she suffered as the result of the period of awareness.

IV. WITNESSES

a. Fact Witnesses, as to Damages:

1. Jennifer Baker (Plaintiff Patient);
2. Kevin Baker (Plaintiff Husband);
3. Dr. Andrejz Kucharsky (PCP) -- trial deposition taken and on videotape;
4. Dr. Elizabeth Ellis (Psychologist) -- trial deposition taken and on videotape.

b. Fact Witnesses, as to Liability:

1. Kyle C. Benedetto, CRNA
c/o Lehigh Valley Hospital;
2. Alphonse A. Maffeo, M.D.
c/o Lehigh Valley Hospital;
3. Heiwon Chung, M.D.
c/o Lehigh Valley Hospital;

c. Expert Witnesses:

i. On Behalf of Defendants:

- | | | |
|----|--------------------------|-----------------------|
| 1. | Frank Dattilio, Ph.D. | Psychology expert |
| 2. | James Noone, M.D. | Anesthesiology expert |
| 3. | Joshua Cohen, M.D. | Endocrinology expert |
| 4. | Donald Sivick, Jr., M.D. | Anesthesiology expert |
| 5. | Karl Doghramji, M.D. | Sleep Medicine expert |

ii. **On Behalf of Plaintiffs:**

- | | | |
|----|-------------------------|-----------------------|
| 1. | Joseph Stirt, M.D. | Anesthesiology expert |
| 2. | William VanMeter, Ph.D. | Psychology expert |

Defendants reserve the right to call any witnesses listed in the Pretrial Memorandum of Plaintiffs and Co-Defendants, and to timely supplement this list in advance of trial.

V. **EXHIBITS**

1. All medical, employment and insurance records of Plaintiff including but not limited to the following:
 - a. Lehigh Valley Hospital;
 - b. William VanMeter, Ph.D.;
 - c. Nazareth Family Practice;
 - d. Those records set forth in the Pre-Trial Memorandum of co-D
Defendants ## 1 through 80;
2. All medical bills of Plaintiff, Jennifer Baker, pursuant to Moorhead v. Crozer Chester Medical Center, 564 Pa. 156, 765 A.2d 786.
3. Anatomical models, charts, diagrams and/or illustrations of those relevant portions of the human body pertaining to the subject matter of this case.
4. Other demonstrative exhibits for use at trial to assist in testimony of witnesses.
5. Deposition transcripts of the following individuals:
 - a. Defendant, Alphonse Maffeo, M.D.;
 - b. Defendant, Kyle C. Benedetto, CRNA;
 - c. Previously named Defendant, Heiwon Chung, M.D.;
 - d. Plaintiff Patient, Jennifer Baker;
 - e. Plaintiff Husband, Kevin Baker;
 - f. Andrzej Kucharski, M.D.;

- g. Elizabeth M. Ellis, Ph.D.;
 - h. William VanMeter, Ph.D.; and
 - i. Timothy Gilbert, M.D.
6. Expert Reports and curriculum vitae of the following:
- a. Frank Dattilio, Ph.D. – (psychologist) on behalf of Defendants;
 - b. James Noone, M.D. – (anesthesiologist) on behalf of Defendants;
 - c. Joshua Cohen, M.D. – (endocrinologist) on behalf of Defendants;
 - d. Donald Sivick, Jr., M.D. – (anesthesiologist) on behalf of Defendants;
 - e. Karl Doghramji, M.D. – (sleep disorder) on behalf of Defendants;
 - f. Joseph Stirt, M.D. (anesthesiologist) on behalf of Plaintiffs; and
 - g. William VanMeter, Ph.D. (psychologist) on behalf of Plaintiffs.
7. All documents exchanged between the parties during discovery.
8. All exhibits listed by Plaintiffs in their Pretrial Memorandum.
9. All exhibits listed by Co-Defendants in their Pretrial Memorandum.
10. Defendants reserve the right to supplement its list of exhibits up to the time of

trial upon proper notification to the Court and counsel for Plaintiff.

VI. ESTIMATED LENGTH OF TRIAL

Seven (7) to ten (10) days.

VII. SPECIAL COMMENTS

A. Legal Issues: Defendants believe that the legal issues that will be before this Honorable Court during the Trial of this matter are identified in: (a) §II, *supra*.; (b) its answer to Plaintiffs' Motion *in limine*; and (c) generally, in its previously submitted Proposed Jury Instructions.

B. Stipulations: It is requested that the parties stipulate to the authenticity of all medical and records without the necessity of calling records custodians as witnesses. In the

event there is no such agreement, Defendant supplements its witness list to include records custodians for each of the health care providers noted.

C. Statement of Objections: None at this time. Defendants reserve the right to supplement this Statement, and to so object, based upon the testimony elicited from Plaintiffs' fact and expert witnesses, and the documents Plaintiffs actually attempt to admit into evidence at trial.

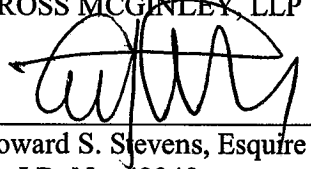
D. Deposition Testimony: Defendants intend to play the entirety of videotaped depositions which have been conducted of: (a) Dr. Andrejz Kucharsky (Mrs. Baker's prior treating PCP) and (b) Dr. Elizabeth Ellis (Mrs. Baker's prior treating psychologist), pursuant to F.R.C.P. 32(a)(4)(B). Dr. Kucharsky now resides and works in Sarasota, Florida. Dr. Ellis resides and works in Alpharetta, Georgia.

E. Other Issues: None.

Respectfully Submitted,

GROSS MCGINLEY, LLP

By:



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Date: September 21, 2012

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JENNIFER L. BAKER AND KEVIN C.
BAKER, HER HUSBAND,

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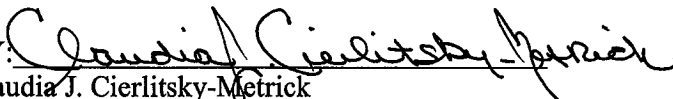
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of PRETRIAL MEMORANDUM ON BEHALF OF DEFENDANTS KYLE C. BENEDETTO AND LEHIGH VALLEY HOSPITAL, INC. and Certificate of Service, are available for viewing and downloading from the ECF System. All counsel of record was served via electronic notification.

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GROSS MCGINLEY, LLP

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Esquire

Date: September 21, 2012